

USDOL/OALJ Reporter

[\*Fuchko & Yunker v. Georgia Power Co.\*](#), 89-ERA-9 (Sec'y Mar. 23, 1989)

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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR  
WASHINGTON, D.C.

DATE: March 23, 1989  
CASE NOS. 89-ERA-9 and 89-ERA-10

IN THE MATTER OF

JOHN M. FUCHKO AND  
GARY A. YUNKER,  
COMPLAINANTS,

v.

GEORGIA POWER CO.,  
RESPONDENTS.

BEFORE: THE SECRETARY OF LABOR

ORDER TO SUBMIT SETTLEMENT AGREEMENT

Administrative Law Judge (ALJ) Daniel A. Sarno submitted a [recommended] Order Granting Stipulation of Dismissal with Prejudice to me on February 2, 1989, in this case arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1982). The ALJ's order states that the parties filed a Stipulation of Dismissal with Prejudice which was based on "a full settlement" of these matters. The ALJ granted the motion for dismissal under 29 C.F.R. § 18.9(c)(2) (1988).

No copy of the settlement agreement is in the record, and it appears that the agreement was not submitted to or reviewed by the ALJ. In whistleblower cases under the ERA which are set it is error for an ALJ to dismiss a case without review settlement and making a recommendation of whether the settlement is fair, adequate and reasonable. 42 U.S.C. § 5851(b)(2)(A); 29 C.F.R. § 24.6(a). The Secretary has held that such a case cannot be dismissed unless the Secretary finds that the settlement is fair, adequate and reasonable.<sup>1</sup> *Macktal v. Brown & Root Inc.*, Case No. 86-ERA-23, Order to Submit

Settlement Agreement issued May 11, 1987, slip op. at 2; *Johnson v. Transco Products*, Case No. 85-ERA-7, issued August 8, 1985, slip op. at

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1; *Chan Van Vo v. Carolina Power and Light Co.*, Case No. 85-ERA-3, issued April 12, 1985, slip op. at 1. Although it is not necessary that the settlement agreement be part of the final order, as the Secretary explained in *Macktal v. Brown & Root*, "[w]here a settlement is not fair and equitable to a complainant, I cannot approve it for to do so would be an abdication of the responsibility imposed upon me by Congress to effectuate the purposes of section 5851, which is to encourage the reporting of safety violations by prohibiting economic retaliation against employees reporting such violatins [sic]." Slip op. at 2.

In the interest of judicial economy, rather than remand these matters to the ALJ to review the settlement and submit a new recommended decision, the parties are ordered to submit a copy of the settlement agreement to me for review. If all the parties, including the complainants individually, have not signed the settlement agreement itself, the parties shall submit a certification or stipulation, signed by all the parties to the agreement, including the complainants individually, demonstrating their informed consent to the agreement. The agreement should be submitted within thirty days of receipt of this order.

SO ORDERED.

Elizabeth Dole  
Secretary of Labor

Washington, D.C.

#### [ENDNOTES]

<sup>1</sup>Section 5851(b)(2)(A) of the ERA provides in pertinent part that "the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary *on the basis of a settlement entered into by the Secretary*. . . issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint." (emphasis added).